BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2014-346-WS

IN RE: Application of Daufuskie Island Utility Company, Incorporated for Approval of an Increase for Water and Sewer Rates, Terms and Conditions	)))))	**ORS BRIEF IN OPPOSITION TO DIUC'S REQUEST FOR RETROACTIVE REPARATIONS**

The South Carolina Office of Regulatory Staff ("ORS") respectfully submits this Brief pursuant to Public Service Commission of South Carolina ("Commission") Order No. 2021-132 (the "Order"), which approved the Settlement Agreement[1] entered into between Daufuskie Island Utility Company, Inc. ("DIUC"), Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., Bloody Point Property Owner's Association, and ORS (collectively referred to as the "Parties"). ORS submits this legal brief to the Commission for the purpose of addressing the legal determination whether DIUC may charge its customers retroactive reparations. Should the Commission grant DIUC's request, an evidentiary hearing may follow.[2] As discussed below, the law is clear, and it would be unlawful for DIUC to charge its customers retroactive reparations.

In addition to this Brief, ORS relies on and incorporates herein the record of proceedings and filings to date in Docket No. 2014-346-WS that have properly been submitted into the record,

[1] In the Settlement Agreement, the Parties agreed that each would have the opportunity to present "their positions regarding [...] reparations via written submission." Commission Order No. 2021-132, Order Exhibit 1, paragraph 8; See also Commission Order No. 2021-132, which states, "the Parties can brief the matter [of the legality of retroactive reparations] to the Commission for its further determination in this case." Order p. 5.

[2] Commission Order No. 2021-132, Order Exhibit 1, paragraph 8.

as well as those in South Carolina Supreme Court Appellate Case Nos. 2016-000652 and 2018-001107.

ARGUMENT

1. THE LAW AND POLICY PROHIBIT THE RETROACTIVE REPARATIONS SOUGHT BY DIUC.

    a. Awarding Rates That Provide for the Future Collection of Past Lost Revenues or Interest Constitutes Impermissible Retroactive Ratemaking.

The Company is prohibited from receiving the relief it seeks, including charging its customers for any interest on any alleged lost revenues, because the awarding of any rates that provide for the future collection of any claim of past lost revenues or interest would constitute impermissible retroactive ratemaking. DIUC mistakenly argues that the retroactive application of rates has not been addressed by South Carolina courts.[3] Accordingly, the only case-law that DIUC cites in support of its position comes from other jurisdictions, which of course have no authority over this Commission.[4] In contrast, South Carolina courts have specifically held that rate-making

[3] See DIUC Brief, p. 21.

[4] While not cited by DIUC, in Hamm v. Cent. States Health and Life Company of Omaha ("Central States"), the South Carolina Supreme Court reasoned that, where certain insurance rates were found unlawful, the authority of an Insurance Commissioner granted under S.C. Code Ann. § 38-3-110(1) (Supp. 1987), "to make refunds of monies collected under an unlawful rate [was] a reasonably necessary implication arising from the authority of the Commissioner to regulate rates." 299 S.C. 500, 504, 386 S.E.2d 250, 253 (1989). In Parker v. S.C. Pub. Serv. Comm'n, 280 S.C. 310, 313 S.E.2d 290 (1984) ("Parker I"), the Supreme Court concluded the Commission erred by including an injuries and damages reserve account in approving an electric utility's rate base. In a second appeal, the Supreme Court reversed the Commission's order on remand because it allowed the electric utility to retain funds to which it was not entitled. Parker v. S.C. Pub. Serv. Comm'n, 285 S.C. 231, 328 S.E.2d 909 (1985) ("Parker II"). Both cases are distinguishable from the facts currently before the Commission. Central States involved insurance rates, not the statutes the General Assembly has enacted for setting rates for water and wastewater utilities. In addition, in the context of electric utilities, a statute is in place which allows for reparation orders under certain limited circumstances. See S.C. Code Ann. § 58-27-960. One limitation on the authority granted under S.C. Code Ann. § 58-27-960 is "no order for the payment of reparation upon the ground of unreasonableness must be made by the commission in any instance wherein the rate or charge in question has been authorized by law." Id. No statute similar to § 58-27-960 exists for water and wastewater utilities. Further, a refund situation is inherently different than what is sought by DIUC because only utilities are granted to the ability to effect rates under bond. Parties other than utilities do not have this ability to prevent rates they believe are unlawfully high from going into effect. Finally, in the second appeal of this matter where DIUC did not place rates into effect under bond, the Supreme Court, unlike in Central States and Parker I and II, specifically stated it was not addressing "the merits at all" and did "not intend to make any suggestion of our views of the merits." Daufuskie Island Util. Co., Inc. v. S.C. Off. of Reg. Staff, 427 S.C. 458, 464, 832 S.E.2d 572, 575 (2019).

is a prospective rather than a retroactive process. Porter v. S.C. Pub. Serv. Comm'n, 328 S.C. 222, 231, 493 S.E.2d 92, 97 (1997) (stating retroactive ratemaking is "prohibited based on the general principle that those customers who use the service provided by the utility should pay for its production rather than requiring future ratepayers to pay for past use."). See also S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n of S.C., 275 S.C. 487, 491, 272 S.E.2d 793, 795 (1980); Parker v. S.C. Pub. Serv. Comm'n, 288 S.C. 304, 307, 342 S.E.2d 403, 405 (1986), overruled on other grounds by Daufuskie Island Util. Co., Inc. v. S.C. Office of Reg. Staff, 420 S.C. 305, 803 S.E.2d 280 (2017) ("Ratemaking is a prospective process, not a retroactive one. Any rate increases must be applied prospectively.").

Similarly, the General Assembly has not delegated to the Commission the power to correct or increase a previously approved rate for water and wastewater utilities by allowing a utility to retroactively collect revenues. The Commission is statutorily empowered to correct established water and wastewater rates that it finds to be "unjust, unreasonable, noncompensatory, inadequate, discriminatory or preferential or in any wise in violation of any provision of law" but only on a going forward basis. S.C. Code Ann. § 58-5-290 ("[T]he Commission shall, subject to review by the courts, as herein provided, determine the just and reasonable fares, tolls, rentals, charges or classifications, rules, regulations or practices to be thereafter observed and enforced and shall fix them by order as herein provided." (emphasis added)). The Supreme Court applied this principal in Porter and held "the Commission has the continuing power to prospectively correct or reduce a previously approved charge." Porter, 328 S.C. at 235, 493 S.E.2d at 99.

"The duty to fix a reasonable rate for a service performed by a public utility rests solely with the Commission, and neither [the Supreme] Court nor the circuit court can assume this responsibility." Carolina Water Serv., Inc. v. S.C. Pub. Serv. Comm'n, 272 S.C. 81, 86, 248 S.E.2d

924, 926 (1978). As such, neither Supreme Court decision issued in the previous two appeals in this matter set rates. The only rates established since DIUC filed its rate application were those the Commission set, and the Commission did not set rates at their current level until March 30, 2021. DIUC's request to recover reparations in the form of revenue it claims to have lost because the current rates were not placed into effect at an earlier date and interest on that revenue constitutes a request for retroactive ratemaking in violation of the statutory and common law of this State. Accordingly, both the governing statutes and the precedent set by South Carolina Supreme Court stand in direct conflict with DIUC's goal to recover retroactive reparations.

b. DIUC is Prohibited from Collecting its Alleged Lost Revenues Because DIUC Did Not Put Its Requested Rates into Effect Under Bond Pending Resolution of the Second Appeal.

Pursuant to its statutory authority, the Commission sets "just and reasonable" rates, which are in turn collected by utilities from their customers.[5] South Carolina Code Ann. § 58-5-240(D) states in part, "...[i]f the Commission rules and issues its order within the time aforesaid, and the utility shall appeal from the order, by filing with the Commission a petition for rehearing, the utility may put the rates requested in its schedule into effect under bond only during the appeal and until final disposition of the case...." According to S.C. Code Ann. § 58-5-340, "[a] decision of the commission may be reviewed by the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules upon questions of both law and fact, as provided pursuant to this section...."

[5] See S.C. Code Ann. § 58-5-210, which states, "[t]he Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every 'public utility' as herein defined."

South Carolina Code Ann. §§ 58-5-210, -240(D), and -340 collectively create a substantive right for DIUC (the right to appeal a Commission Order if the utility determines that rates ordered were not just and reasonable) and provide a remedy for infringement of that right (the right to charge its customers rates not otherwise ordered by the Commission during the pendency of the appeal). DIUC initially availed itself of the statutory protections provided in S.C. Code Ann. § 58-5-240(D) and received the commensurate benefit of charging its customers rates not approved by the Commission during the pendency of the appeal.[6] However, during the pendency of the second appeal, despite the availability of a statutory remedy, DIUC did not avail itself of the protections afforded by the General Assembly. Because DIUC did not put its requested rates into effect under bond pending resolution of the second appeal, DIUC is prohibited from now collecting those revenues from its customers. See Dockins v. Ingles Markets, Inc., 306 S.C. 496, 498, 413 S.E.2d 18, 19 (1992) ("[w]hen a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy." (citing Campbell v. Bi–Lo, 301 S.C. 448, 392 S.E.2d 477 (Ct.App.1990)).

Notwithstanding the legal prohibitions against DIUC's attempt to recover retroactive reparations from its customers, there is also sound policy to prohibit DIUC from retroactively recovering these monies. The General Assembly set forth a specific mechanism in S.C. Code Ann. § 58-5-240(D), which would have allowed DIUC to recover the revenue it would have realized from its requested rates. This well-reasoned procedure creates specific checks and balances for both utilities and their customers. For instance, if the utility avails itself of the protections afforded by S.C. Code Ann. § 58-5-240(D) and the appellate court reverses the Commission, then during

[6] Commission Order No. 2016-156. Other utilities have also recently attempted to utilize the protections afforded by S.C. Code Ann. § 58-5-240(D) (See Motion for Approval of Bond of Blue Granite Water Company, Commission Docket No. 2019-290-WS, filed on June 8, 2020.).

the pendency of the appeal the utility will have collected from its customers the rates it originally sought. However, if the appellate court affirms the Commission's order, then that utility must return to its customers the unlawfully charged rates, with interest. It is through this mechanism that the General Assembly prudently balanced the interests of utilities and their customers. If the Commission were to grant DIUC's request to retroactively collect reparations in this case, the Commission would allow DIUC the ability to collect rates outside of the authorized statutory parameters. Such Commission action would signal to utilities that they need not follow the bond statute and still may recover additional monies on the back-end. DIUC's unlawful request would upset the careful balance set-forth by the General Assembly, remove the risk from utilities utilizing S.C. Code Ann. § 58-5-240(D), and instead place the risk on the utilities' customers.

DIUC spends much of its brief re-presenting certain facts in this case and making the argument that it had no choice in the matter regarding whether to obtain a bond. While those facts may be disputed, assuming *arguendo* they are true, the statute is unequivocal and makes no exemption for a utility that does not avail itself of the specific protections established by the General Assembly. Because DIUC did not avail itself of the statutory remedy, the law is clear that DIUC is now prohibited from retroactively recovering reparations.

To the extent DIUC seeks equitable relief in this matter in the form of restitution, unjust enrichment, or similar concepts, such "relief is generally available only where there is no adequate remedy at law. An adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). This rule applies in the context of ratemaking. See id. In Santee Cooper, the Commission set a rate schedule of $8.00 per month. Id. at 181, 379 S.E.2d at 120. The Consumer Advocate appealed to the circuit court and requested the court place the $8.00 rate into effect under bond. Id. at 181, 379 S.E.2d at

120-21. The circuit court granted the motion and required the utility to file a bond undertaking to secure a refund with 14% interest if any was ordered at the conclusion of the case. Id. at 181, 379 S.E.2d at 121. The Supreme Court reversed concluding the applicable bond statute did not authorize the requirement of a bond at the request of a party other than the utility and that Administrative Procedure Act did not authorize the bond either. Id. at 182-84, 379 S.E.2d at 121-22. The Consumer Advocate also argued the circuit court had inherent equitable power to place rates into effect under bond. Id. at 185, 379 S.E.2d at 122-23. The Supreme Court held the circuit court lacked equitable authority because an adequate statutory remedy existed, reasoning "the court's equitable powers must yield in the face of an unambiguously worded statute." Id. at 185, 379 S.E.2d at 123. The same reasoning applies here. DIUC had an unambiguous statutory remedy available to it in S.C. Code Ann. § 58-5-240(D); therefore, the Commission does not have authority to grant equitable relief.

c. The Commission Lacks Authority to Award Refunds in the Nature of Reparations for Past Rates or Charges.

Finally, this Commission simply lacks the authority to grant DIUC's request for retroactive reparations. "[A]s creatures of statute, regulatory bodies are possessed of only those powers which are specifically delineated." S.C. Elec. and Gas Co. v. Pub. Serv. Comm'n of S.C., 275 S.C. 487, 489, 272 S.E. 2d 793, 794 (1980) See also Piedmont & Northern Ry. Co. v. Scott, 202 S.C. 207, 24 S.E.2d 353 (1943); Black River Elec. Co-op., Inc. v. Pub. Serv. Comm'n, 238 S.C. 282, 120 S.E.2d 6 (1961) (The Commission is a body of limited jurisdiction and only has those powers vested in it by act of the General Assembly). "Any reasonable doubt of the existence in the commission of any particular power should ordinarily be resolved against its exercise of the power." See also Piedmont & Northern Ry. Co., 202 S.C. at __, 24 S.E.2d at 360, (quoting 51 C.J. 36, 37). According to the South Carolina Supreme Court, "[t]he Commission simply does not

have any implied power to award refunds in the nature of reparations for past rates or charges; such power must be expressly conferred by statute." Id. at 490, 795 (citing Hope Natural Gas Co. v. Federal Power Commission, 196 F.2d 803 (4th Cir. 1952); Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378, 79 S.Ct. 1246, 3 L.Ed.2d 1312 (N.Y.1959); New Rochelle Water Co. v. Public Service Commission, 31 N.Y.2d 397, 340 N.Y.S.2d 617, 292 N.E.2d 767 (1972)). While the issue in South Carolina Electric and Gas Co. v. Public Service Commission was a refund a utility was ordered to pay its customers, the reasoning applies with equal force here. The Supreme Court stated "[t]he Commission has no more authority to require a refund of monies collected under a lawful rate than it would have to determine that the rate previously fixed and approved was unreasonably low, and that the customers would thus pay the difference to the utility." S.C. Elec. and Gas Co. v. Pub. Serv. Comm'n of S.C, 275 S.C. at 491, 272 S.E.2d at 795.

South Carolina Code of Laws Title 58, Chapter 5 grants no authority to the Commission to issue reparations for this situation, and accordingly, the Commission lacks the authority to grant DIUC's request.

2. THE RATES SET FORTH IN THE SETTLEMENT AGREEMENT ARE DIFFERENT THAN THOSE ORIGINALLY SOUGHT BY DIUC.

In its original Application, DIUC sought additional revenue of $1,182,301, which would have increased DIUC's total adjusted revenue to $2,267,722. On February 18, 2021, the Parties filed a Settlement Agreement in which they agreed that rates intended to generate $2,267,714 of annual revenue for DIUC were just and reasonable and would become effective upon Order of the Commission accepting the Settlement Agreement to be first billed by DIUC to its customers in the first bill issued by DIUC thereafter. While the dollar figure settled upon is nearly equal to the dollar figure that DIUC originally sought, the composition of those rates is substantively different. Additionally, ORS was only able to conclude that certain expenses were reasonably recoverable

from DIUC's customers after this Commission ordered DIUC to fully comply with ORS's discovery requests.[7] Accordingly, DIUC mischaracterizes this Settlement Agreement as indicative that ORS now agrees that DIUC's original application sought just and reasonable rates.

a. The Rate Case Expenses That DIUC Now Recovers are Dramatically Different than Those DIUC Sought in Its Original Application.

The amount of rate case expenses, which are embedded in the $2,267,714 of annual revenue for DIUC and that were approved by the Commission as a result of the Settlement Agreement, vary significantly from what DIUC sought in the original application. Additionally, while ORS eventually was able to determine that these expenses were justifiably recoverable, that determination was only made after the Commission granted ORS's Motion to Compel.

To provide brief context, despite the fact that DIUC's counsel filed a letter with the Commission on November 15, 2019, advising the Company did not intend to introduce any additional evidence in this matter as "the record is fully developed and another hearing for further testimony or evidence is not necessary," it still filed 22 pages of testimony and 42 pages of exhibits on June 16, 2020.[8] In accordance with ORS's statutory obligations, it reviewed the testimony filed by DIUC and issued a request for information, to which DIUC responded on July 10, 2020.[9] In DIUC's response, it asserted for the first time that certain invoices had been paid. DIUC also alleged that ORS's request was in contradiction to the Court's Opinion despite the fact that the Court explicitly stated "[i]n this reversal and remand, [the Court does] not address the merits at

[7] Commission Order No. 2020-700.

[8] Commission Order No. 2020-382 required a Procedural Schedule be set and a limited hearing occur on "rate case expenses, plant in service, and reparations."

[9] South Carolina Code Ann. § 58-4-50 directs ORS to inspect, audit, and examine public utilities and make appropriate recommendations to the Commission regarding matters within the jurisdiction of the Commission when in the public interest. Moreover, ORS "must represent the public interest of South Carolina before the commission...'public interest' means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services."

all.... Rather, we simply require the commission and ORS evaluate the evidence and carry out their important responsibilities consistently, within the 'objective and measurable framework' the law provides."[10] As a result, ORS respectfully moved for clarification from the Commission as to whether the Commission sought to have ORS continue its investigatory review or cease to conduct any further review of DIUC and thereby allow the Commission to rely upon the record as it currently stands. On July 22, 2020, the Commission issued Order No. 2020-496, which, "[granted] the Motion for Clarification and [requested] that ORS continue its investigatory review of the matter of the rate case invoices." Subsequent to that Order, ORS resumed its investigatory obligations. On July 23, 2020, counsel for ORS reached out to counsel for DIUC via e-mail and "once again [reiterated] the [previously sent request] that all documentation that demonstrates payment of these invoices be provided." Additionally, counsel for ORS stated ORS's position that it "is imperative that the parties cooperatively work together to ensure all pertinent information is readily available." On July 24, 2020, ORS issued a second continuing request for production of documents for the second remand proceeding. Unfortunately, DIUC continued its uncooperative stance and submitted a response on August 7, 2020, in which it again made the same unjustifiable assertions against ORS.[11] As a result of DIUC's actions, ORS had no reasonable alternative but to file a Motion to Compel production of documents to which ORS was rightly entitled by statute.[12] In response, DIUC stated "[t]he supposition that there has been some sort of incomplete response or that DIUC intentionally withheld information is totally ridiculous."[13] However, at oral

[10] Daufuskie Island Utility Company, Inc., 427 S.C. at 464, 832 S.E.2d at 575 (citation omitted).
[11] DIUC's August 7, 2020, response filed on the Commission's Docket Management System.
[12] S.C. Code Ann. § 58-4-55.
[13] DIUC Response, p. 8.

argument on the matter, counsel for DIUC conceded that DIUC could provide the requested reconciliation to ORS, but merely chose not to.[14]

On October 8, 2021, the Commission issued Order No. 2020-700 in which it "[granted] the Motion to Compel filed by the ...ORS." Subsequently, on December 11, 2020, DIUC produced discovery responses including new information and totaling 134 pages to ORS. Much of the information produced related to matters that were not initially included in DIUC's original Application. Based upon this new information, ORS was finally able to confirm certain rate case expenses were appropriate for recovery and recommend that recovery from DIUC's customers was just and reasonable. To be clear, because DIUC chose to withhold pertinent information and absent this additional information, ORS remained unable to confirm that recovery of certain rate case expenses was just and reasonable and in the public interest until the Commission granted the Motion to Compel. DIUC's implication that ORS's discovery caused the case to continue unnecessarily is patently false, counter to ORS's statutory mission, and only serves to distract the Commission from the legal issue regarding the lawfulness of granting retroactive reparations.[15]

As a result of ORS's investigation, the Parties were able to enter into a Settlement Agreement and, pursuant to Commission Order No. 2021-132, DIUC may now collect approximately $910,790[16] in rate case expenses. In its original Application, DIUC only sought recovery of approximately $95,600[17] in rate case expenses. The difference is stark and clearly shows that while the total dollar value settled upon is nearly equal to the total revenue increase originally applied for by DIUC, the composition of those rates is dramatically different.

[14] See Oral Argument Tr. p. 57, l. 15 through p. 61, l. 19.
[15] See DIUC Brief, p. 12; S.C. Code Ann. § 58-4-10.
[16] See Commission Order No. 2021-132, p. 4.
[17] See DIUC Application, Schedule W-C.1, Adjustment (15).

b. The Rate Base Expenses That DIUC Now Recovers are Dramatically Different from What DIUC Sought In Its Original Application.

The Settlement Agreement excludes from recovery Utility Plant in Service of $699,361.[18] According to the Settlement Agreement:

> [t]he inclusion of $542,978 for Guastella Associates' rate case expenses along with the additional legal rate case expenses, related minor, and fall-out adjustments generates $2,267,714 of annual revenue for DIUC in DIUC's 2021 Rates. As shown in the Second Revised Notice of Filing the rates most recently noticed to DIUC customers indicated annual revenue of $2,267,722. Including the $699,361 in Utility Plant In Service would result in rates that exceed the noticed revenue of $2,267,722.[19]

In order to stay below the revenue limits created by DIUC's Noticed Rates, DIUC agreed to "delay seeking recovery of the corresponding $699,361 until its next rate filing...."[20] This is yet another example of the stark differences between the composition of rates DIUC is now charging and the rates it originally sought.

While DIUC may be allowed the opportunity to earn $2,267,722 in revenue, it is clear that the resulting rates were only determined to be just and reasonable by the Parties after the Commission compelled DIUC to comply with its regulatory and statutory obligations. Furthermore, the total revenues are comprised of very different rate case and rate base components than those that DIUC originally sought. For the aforementioned reasons, ORS does not agree that DIUC's original application sought just and reasonable rates.

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[18] Commission Order No. 2021-132, Order Exhibit 1, Paragraph 7.

[19] Id.

[20] Id.; The dictates of due process require that utilities may not charge their customers rates greater than those noticed. See Article I, Section 22 of the South Carolina Constitution, which provides that "[n]o person shall be finally bound by a . . . quasi-judicial decision of an administrative agency . . . except on due notice and an opportunity to be heard[.]"; See also The South Carolina Administrative Procedures Act requirement that "[o]pportunity be afforded all parties to respond," S.C. Code Ann. § 1-23-320(E), and that "[f]indings of fact must be based exclusively on . . . matters officially noticed." S.C. Code Ann. § 1-23-320(I); Kurschner v City of Camden Planning Comm'n 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008) (The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.).

3. DIUC RECEIVED THE BENEFIT OF JUDICIAL REVIEW.

DIUC asserts that it will not receive the benefits of judicial review absent the ability to retroactively collect reparations from its customers. This assertion is confounding considering the fact that DIUC received the benefit of Commission and appellate review multiple times. Moreover, the Settlement Agreement specifically allows DIUC to continue to seek the benefit of judicial review.[21]

Had DIUC utilized the remedies available in S.C. Code Ann. § 58-5-240(D) when it appealed this matter, it would not have experienced the "shortfall in revenues" it now seeks. Simply because the Company did not avail itself of the available statutory protections does not mean that rejecting its claim for retroactive recovery of lost revenues would deny it the benefit of judicial review now. DIUC seeks more than judicial review in this proceeding. It is seeking judicial review plus interest from its customers that in some cases may exceed $44,000.[22] This is patently unjust and unreasonable.

CONCLUSION

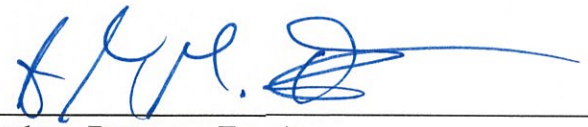
DIUC selectively espouses a white-washed version of facts in this case while ignoring the governing laws that stand in stark contrast with its position. It is not only unjust and unreasonable to impose retroactive reparations upon DIUC's customers, it is prohibited as a matter of law because the Commission, as a body of limited jurisdiction, cannot authorize or approve a utility to

[21] Commission Order No. 2021-132, Order Exhibit 1, Paragraph 8, states, "[t]he Parties agree that this proceeding [...] will remain open until the issue discussed above in Paragraph 8 herein is fully adjudicated, including any appeals and final order(s) on remand, if necessary. The Parties reserve their right to appeal the Commission's decision regarding this issue."

[22] See Notice of Settlement, Increase in Rates, and Future Proceedings, Schedule II, filed with the Commission on March 31, 2021.

charge prospective rates for past lost revenues. Accordingly, ORS respectfully requests that this Commission deny DIUC's request to impose and collect retroactive reparations on its customers.

Respectfully submitted,



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